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No. 93-1167

In The

Supreme Court of the United States

October Term, 1993

BONNIE L. HICKLE,

Petitioner,

v.

AMERICAN SERVICE CORPORATION OF SOUTH CAROLINA,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of South Carolina

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION

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ARGUMENT SUMMARY

A state is entitled to limit the exemptions from levy and execution to its citizens as such exemptions are not among the privileges and immunities that must be extended to the citizens of all states. Accordingly the unanimous decision of the South Carolina Supreme Court in this case should not be reviewed.

ARGUMENT

I. Privileges and Immunities

The writ of certiorari in this case should be denied as the unanimous decision of the South Carolina Supreme Court is in accordance with the applicable decisions of this Court, and is in conformity with other state appellate court decisions holding that there is no constitutional requirement that a state extend its exemptions to the residents of all states.

In *Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1988) this Court applied a two-step inquiry in determining whether citizenship or residency classification is violative of privileges and immunities protection. "First, the activity in question must be 'sufficiently basic to the livelihood of the Nation' . . . as to fall within the purview of the Privileges and Immunities Clause . . . " *Friedman*, 487 U.S. at 64 (1988) quoting *United Building and Construction Trades Council v. Mayor and Council of Camden*, 465 U.S. 208, 221-222 (1984); and *Baldwin v. Montana Fish and Game Commission*, 436 U.S. 371, 388 (1978). "Second, if the challenged restriction deprives nonresidents of a protected privilege, we will invalidate it only if we conclude that the restriction is not closely related to the advancement of a substantial state interest." *Friedman*, 487 U.S. at 65 (citing *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 at 284). Limiting exemptions from levy and execution to individuals domiciled in the state does not violate either step.

First, the availability of exemptions is not so basic as to fall within the purviews of the Privileges and Immunities Clause. This Court has recognized that exemption

laws ". . . are part of the remedy and subject to the law of the forum." *Chicago, R. I. and P. R. Co. v. Campbell,* 174 U.S. 710, 717 (1899). Further, it has been recognized that states could discriminate between residents and nonresidents in their pursuit of claims in the courts of the state. In *Central Loan and Trust Co. v. Campbell Commission Co.,* 173 U.S. 84 (1898) the court upheld a state statute which required posting a bond in order to attach property belonging to a state resident while not requiring a bond where the property of a nonresident was involved. It was recognized in *Central Loan* that it was an " . . . elementary doctrine . . . that for the purposes of the remedy of attachment, the legislative authority of a state or territory may classify residents in one class and nonresidents in another. . . . " *Central Loan,* 173 U.S. at 98. This court has further upheld the application of the statute of limitations to nonresident Plaintiffs while not to resident plaintiffs, *Canadian Northern Ry. Co. v. Eggen,* 252 U.S. 553 (1920); allowed the tolling of the statute of limitations for resident but not nonresident Plaintiff, *Chemung Canal Bank v. Lowery,* 93 U.S. 72 (1876) and, requiring citizens of another state to post a bond for costs prior to using state court for suit. *Blake v. McClung,* 172 U.S. 239 (1898) later app. 176 U.S. 59 (1898).

Second, the exclusion of nonresidents from its exemption laws is in furtherance of legitimate state interests. In the present case the South Carolina Supreme Court recognized that ". . . the classification is reasonably based upon South Carolina's legitimate interest in preventing its citizens from becoming dependent upon the state for support." *American Service Corporation of South Carolina v. Bonnie L. Hickle,* 435 S.E.2d 870, at 871 (1993).

Furthermore, as recognized in Justice Toal's concurring opinion in the present case, because every state has its own exemption laws, not extending the exemptions available to South Carolina residents prevents nonresident debtors from receiving benefits of the South Carolina exemptions as well as those of the state of their residence. *American Service,* 435 S.E.2d at 871-872.

The Petitioner has not cited any state appellate decisions holding that the exclusion of nonresidents from the state's exemption laws was in violation of a debtor's constitutional rights. However, a number of states addressing this issue have upheld the exclusion of nonresident debtors from their exemption laws. See *Smith v. Georgia Granite Corporation,* 186 Ga. 634, 198 S.E. 772 (1938), transferred 194 S.E. 908, 57 Ga. App. 245 (1938); *First Union National Bank v. Rolfe,* 83 N.C. App. 625, 351 S.E.2d 117 (1986), later app., 90 N.C. App. 85, 367 S.E.2d 367 (1988); *Seay v. Palmer,* 93 Ala. 381, 9 So. 601 (1891); *Person v. Williams-Echols Dry Goods Co.,* 113 Ark. 467, 169 S.W. 223 (1914); and *Post v. Bird,* 28 Fla. 1, 9 So. 888 (1891).

II. The Right to Travel

South Carolina's exclusion of nonresidents from its statutory exemptions does not impede or impair the right to travel. The Petitioner is free to travel to, through and from South Carolina, and the inability to take advantage of the exemptions made available to South Carolina residents in no way impedes this right.

The South Carolina exemption statute does not impose any requirement that residency be established over a period of time. Nothing precludes the Petitioner

from establishing residency in South Carolina, or precludes the Petitioner from obtaining the benefits of the South Carolina exemptions immediately upon establishing South Carolina residency. If a person moves from one state to another, the right to travel does not require the first state to continue to pay welfare benefits. *Califano v. Torres*, 435 U.S. 1 (1978) (per curiam). Similarly, a state should not be constitutionally required to make its exemptions available to a person once he is no longer domiciled in the state.

CONCLUSION

For the foregoing reasons the writ of certiorari should be denied.

Respectfully submitted,

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